IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10085 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AM PATHAN

Appearance:

1. Special Civil Application No. 10085 of 1993

MR JM BAROT for MR HS MUNSHAW for Petitioner

MR ND SONGARA for MR GK RATHOD for Respondent

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 25/03/2004

ORAL JUDGEMENT

The present petition is filed under Article 227 of the Constitution of India by the Gujarat State Road

Transport Corporation challenging the judgment and award dated 28.07.1992 rendered by the Industrial Tribunal, Vadodara, in Reference (IT) No.296 of 1990 by which the Tribunal directed the S.T.Corporation to give benefit of time-scale to the respondent with effect from 17.06.1974.

2. The respondent, who was serving as typist-cum-clerk in the S.T.Corporation was initially appointed as temporary typist with effect from 17.06.1974 after taking tests etc. by the Divisional Selection Committee on 10.05.1974. The respondent was appointed as temporary typist as there was no permanent post vacant at the relevant time. However, in view of the fact that one Shri N.S.Mehta, a permanent typist, was promoted to the post of the Junior Assistant and, therefore, on his post, the respondent was appointed permanently with effect from 01.08.1975 on that very permanent vacant post of typist in place of Shri N.S.Mehta. It is the case of the petitioner that the respondent was given all the benefits, which are required to be given to a permanent employee, with effect from 01.08.1975.

It is the case of the petitioner that after a period of about 16 years, the respondent has raised an industrial dispute approaching the Deputy Labour Commissioner with a grievance and prayer that he should have been given the time-scale with effect from 17.06.1974 instead of 01.08.1975 in view of the settlement entered into between the S.T.Corporation and the Union.

Thereafter, the dispute was referred to the Industrial Tribunal, Vadodara, which was numbered as Reference (IT) No.296 of 1990. The Industrial Tribunal, after hearing the parties, by its judgment and award dated 28.07.1992, has granted time-scale to the respondent with effect from 17.06.1974 along with all consequential benefits holding that S.T.Corporation has not produced any evidence to the effect that when the respondent was appointed on 17.06.1974, there was no permanent vacant post. The Industrial Tribunal presumed that when the respondent was appointed on 17.06.1974, the appointment was on a permanent vacant post and, held that as per the settlement entered into between the Union and the S.T.Corporation, time-scale is to be given from the date on which permanent post is available. Being aggrieved and dissatisfied with judgment and award of the Industrial Tribunal passed in Reference, the S.T. Corporation has preferred the instant petition, and claimed relief as stated hereinabove.

4. Mr.J.M.Barot, learned counsel for the petitioner, has submitted that the Tribunal has materially erred in granting time-scale to the petitioner with effect form 17.06.1974 because on 17.06.1974 there was no permanent vacant post of typist available with the petitioner-Corporation, and therefore, he was appointed as temporary typist. Further, as one Shri N.S.Mehta, was promoted to the post of Junior Assistant, the permanent vacant post has arisen and on that very post the respondent was appointed with effect from 01.08.1975 and, therefore, the respondent was given benefits of time-scale etc. by the Corporation, which was not admissible to the employee. Mr.Barot has also submitted that the Tribunal has materially erred in shifting the burden on the S.T.Corporation to prove that when the respondent was appointed on a temporary post in the year 1974, there was no permanent vacant post available and, therefore, the judgment and award impugned is required to be quashed and set aside. It is further submitted on behalf of the petitioner that even as per the settlement entered into between the S.T.Corporation and Union, the benefit of time-scale is to be given from the date on which the permanent post is available. Accordingly, the respondent was required to be given benefit with effect from 01.08.1975, that is the date on which he was appointed on permanent post.

5. On the other hand, Mr.N.D.Songara, learned counsel appearing for the respondent, has submitted that when the respondent was appointed on the post of typist with effect from 17.06.1974 after taking test, etc. and due selection by the Divisional Selection Committee on 10.05.1974, the benefit of time-scale is required to be given to the respondent with effect from 17.06.1974 and not from 01.08.1975. Therefore, according to him, the judgment and award impugned in the petition rendered by the Industrial Tribunal is just and proper, and not required to be interfered with.

6. Heard Mr.J.M.Barot, learned counsel for the petitioner, and Mr.N.D.Songara, learned counsel for the respondent.

7. From the record, it emerges that initially, the respondent was appointed as temporary typist on 17.06.1974 as there was no permanent vacant post available, and the moment permanent vacant post was available on promotion of Shri N.S.Mehta, who was working as permanent typist, the respondent was given permanent appointment with effect from 01.08.1975. Even as per the settlement entered into between the Union and the

S.T.Corporation, an employee is required to be given benefits of permanency, time-scale, etc. on his appointment on permanent vacant post. According to the petitioner, the respondent was required to be given benefits with effect from 01.08.1975, the date on which he was appointed on permanent post. Thus, the Tribunal has stepped into error in granting the time-scale to the respondent with effect from 17.06.1974, that too in IT Reference which was raised after a period of 16 years. The Tribunal has also erred in shifting burden on the S.T.Corporation to prove that the date on which the respondent was appointed, there was no permanent vacant post available. When the respondent had approached the Tribunal raising industrial dispute with regard to time-scale alleging that when he was appointed, there was permanent vacant post, it was for the respondent to first establish and prove that there was clear-cut permanent vacant post available with the petitioner Corporation when he was appointed on the temporary post. No evidence was led by the respondent to that effect.

8. Under the circumstances, the reasonings given by the Industrial Tribunal for coming to the conclusion that the respondent is required be given benefit of time-scale with effect from 17.06.1974, deserve to be quashed and set aside and are hereby quashed and set aside. The impugned judgment and award of the Industrial Tribunal is quashed and set aside. The petition stands allowed. Rule is made absolute accordingly. No order as to costs.

(M.R. Shah, J.)

Rajendra